***THE HON'BLE SRI JUSTICE G.BIKSHAPATHY**

AND

***THE HON'BLE SRI JUSTICE P.S. NARAYANA**

+W.P.NOs. 20106 of 2004, 20350 of 2004, 20539 of 2004 and 21554 of 2004

+WRIT PETITION NO : 20106 OF 2004

#P. MURALIDHAR

..... PETITIONER

Vs.

$1. THE ANDHRA PRADESH PUBLIC SERVICE COMMISSION, REP.

BY ITS SECRETARY, GRUHAKALPA COMPLEX, NAMPALLY,

HYDERABAD.

2. THE GOVERNMENT OF A.P. REP. BY ITS SECRETARY, GAD

SERVICES.A.P. SECRETARIAT, HYDERABAD.

3. K. VENKATA UPENDER REDDY

4. CH. RAMA THIRTHA

5. K. SRIKANTH.

.....RESPONDENTS

!Counsel for the Petitioner: MR.SRINIVASA RAO BODDULURI

^Counsel for the Respondent No.1 : MR. M. VIJAYA KUMAR

^Counsel for the Respondent No.2: ADVOCATE GENERAL

^Counsel for the Respondent No.3: MR. ANAND KUMAR KAPOOR

^Counsel for the Respondent No.4: MR. NOOTY RAM MOHAN RAO

^Counsel for the Respondent No.5: None appeared.

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+WRIT PETITION NO : 20350 OF 2004

#M. SURENDER REDDY

..... PETITIONER

Vs.

$1. GOVERNMENT OF A.P. REP. BY ITS SECRETARY(SERVICES),

GENERAL ADMINISTRATION DEPARTMENT, SECRETARIAT,

HYDERABAD.

2. ANDHRA PRADESH PUBLIC SERVICE COMMISSION, REP.

BY ITS SECRETARY, HYDERABAD.

3. C. SAMPATH KUMAR

4. K. VENKATA UPENDER REDDY

.....RESPONDENTS

!Counsel for the Petitioner: MR. D.V.N. ACHARYA

^Counsel for the Respondent No.1 : ADVOCATE GENERAL

^Counsel for the Respondent No.2: MR. M. VIJAYA KUMAR

^Counsel for the Respondent No.3: MR. SATISH

^Counsel for the Respondent No.4: MR. ANAND KUMAR KAPOOR

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+WRIT PETITION NO : 20539 OF 2004

#P.V. KRISHNA REDDY

..... PETITIONER

Vs.

$1. K. RAJAIAH

2. THE A.P. PUBLIC SERVICE COMMISSION, REP. BY ITS

SECRETARY, GRUHAKALPA, HYDERABAD.

3. GOVERNMENT OF A.P. REP. BY ITS SECRETARY, GA(SERVICES)

DEPARTMENT, SECRETARIAT, HYDERABAD.

.....RESPONDENTS

!Counsel for the Petitioner: MR.J.R. MANOHAR RAO

^Counsel for the Respondent No.1 : NONE APPEARED

^Counsel for the Respondent No.2: MR. M. VIJAYA KUMAR

^Counsel for the Respondent No.3: ADVOCATE GENERAL

+WRIT PETITION NO : 21554 OF 2004

#CH. MANGA REDDY

..... PETITIONER

Vs.

$THE SECRETARY, ANDHRA PRADESH PUBLIC SERVICE COMMISSION, GRUHAKALPA, NAMPALLY, HYDERABAD.

.....RESPONDENT

!Counsel for the Petitioner: MR.M. SURENDER RAO

^Counsel for the Respondent : MR. M. VIJAYA KUMAR

<GIST:

>HEAD NOTE:

?CASES REFERRED:

1. 1992(2) S.L.R. 378
2. 1905 A.C. 369
3. (2003)6 S.C.C. 659
4. 2004(1) A.L.D. 288(F.B)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT

HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF DECEMBER

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE G.BIKSHAPATHY

AND

THE HON'BLE SRI JUSTICE P.S. NARAYANA

-

W.P.NOs. 20106 of 2004, 20350 of 2004, 20539 of 2004 and 21554 of 2004

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WRIT PETITION NO : 20106 OF 2004

Between:

P. Muralidhar s/o Veeranna, 29 years unemployee R/o

Regulapadu vil, Via. Jalumuru, Kotabommali mandal, Srikakulam District.

..... PETITIONER

AND

1. The Andhra Pradesh Public Service Commission, rep. by its Secretary, Gruhakalpa complex, Nampally, Hyderabad.

2. The Government of A.P. rep. by its Secretary, GAD Services.A.P. Secretariat, Hyderabad.

3. K. Venkata Upender Reddy s/o Sanjeeva Reddy, 34 years, R./o Inapamula village, Ketepally Mandal, Nalgonda District.

4. Ch. Rama Thirtha S/o Venkata Narasaiah, 35 years R/o 8-4-159, Ganesh Nagar, Karimnagar District.

5. K. Srikanth, A.S.O.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the Hon'ble High Court may be pleased to issue a Writ, Order or direction, more particularly one in the nature of Certiorari calling for the records in O.A.No. 3267 of 2004 and Batch on the file of Andhra Pradesh Administrative Tribunal and quash/set aside the Order dated: 15.10.2004.

Counsel for the Petitioner: MR.SRINIVASA RAO BODDULURI

Counsel for the Respondent No.1 : MR. M. VIJAYA KUMAR

Counsel for the Respondent No.2: ADVOCATE GENERAL

Counsel for the Respondent No.3: MR. ANAND KUMAR KAPOOR

Counsel for the Respondent No.4: MR. NOOTY RAM MOHAN RAO

Counsel for the Respondent No.5: None appeared.

WRIT PETITION NO : 20350 OF 2004

Between:

M. Surender Reddy S/o Venkat Narayan Reddy, aged 34 years, occu: Service R/o Hyderabad

..... PETITIONER

AND

1. Government of A.P. rep. by its Secretary(Services), General Administration Department, Secretariat, Hyderabad.

2. Andhra Pradesh Public Service Commission, rep. by its Secretary, Hyderabad.

3. C. Sampath Kumar, unemployed R/o H.No.298, L.I.G. APHB Colony, Gadwal, Mahabubnagar District.

4. K. Venkata Upender Reddy, Teacher, Z.P.H.S. Solipeta, suryapeta Mandal, Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the Hon'ble High Court may be pleased to issue a Writ in the nature of Certiorari calling for the records relating to common Order dated: 15.10.2004 made in O.A.No. 3765 of 2004 and Batch passed by the learned Andhra Pradesh Administrative Tribunal and to quash the Order in so far as it is against the writ petitioner herein, as being illegal, arbitrary and violative of para 8 of the Presidential Order, 1975 and also contrary to the judgments of the Hon'ble Supreme Court and consequently direct the 2nd respondent to finalise the selections to the Group II Posts (Notification 10/99), dehors the G.O.Ms.No. 124 G.A.D. dated: 7.3.2002 by setting aside the said Order of the Tribunal.

Counsel for the Petitioner: MR. D.V.N. ACHARYA

Counsel for the Respondent No.1 : ADVOCATE GENERAL

Counsel for the Respondent No.2: MR. M. VIJAYA KUMAR

Counsel for the Respondent No.3: MR. SATISH

Counsel for the Respondent No.4: MR. ANAND KUMAR KAPOOR

WRIT PETITION NO : 20539 OF 2004

Between:

P.V.Krishna Reddy S/o Ram Reddy, 42 years, unemployee

R/o C/o Laxma Reddy, 1-1-403/C/8, Narmada Hospital Lane, Gandhi Nagar, Hyderabad.

..... PETITIONER

AND

1. K. Rajaiah, age not known, occu: Unemployee

R/o Bivipet, Nizamabad District.

2. The A.P. Public Service Commission, rep. by its

Secretary, Gruhakalpa, Hyderabad.

3. Government of A.P. rep. by its Secretary, GA(Services)

Department, Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the Hon'ble High Court may be pleased to issue a Writ, Order or direction, more in the nature of Writ of Certiorari calling for the records relating to Order of A.P. Administrative Tribunal dated: 15.10.2004 in O.A.NO. 3326 of 2004 and quash the same by holding it as illegal, bad and arbitrary.

Counsel for the Petitioner: MR.J.R. MANOHAR RAO

Counsel for the Respondent No.1 : NONE APPEARED

Counsel for the Respondent No.2: MR. M. VIJAYA KUMAR

Counsel for the Respondent No.3: ADVOCATE GENERAL

WRIT PETITION NO : 21554 OF 2004

Between:

CH. Manga Reddy S/o Seetha Rama Reddy, Aged 33 years, Unemployee, R/o Hyderabad.

..... PETITIONER

AND

The Secretary, Andhra Pradesh Public Service Commission, Gruhakalpa, Nampally, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the Hon'ble High Court may be pleased to issue an Order, direction, especially one in the nature of Writ of Certiorari calling for the records pertaining to O.A.No. 3768 of 2004 and its Order dated: 15.10.2004 of A.P. Administrative Tribunal and quash the same and further declare that the action of the Andhra Pradesh Public Service Commission in publishing the list of candidates said to have been selected for vacancies in the categories of executive posts without selection of physically Handicapped candidates (except E.O., R.D., and E.O. Panchayats) is illegal, arbitrary and violative of Rule 22 of A.P. State and Subordinate Service Rules and is violative of Article 14 and 16 of Constitution of India and further to declare that petitioner is entitled to be selected to any one of the Executive Posts by applying Rule 22 of A.P. State and Subordinate Service Rules in so far as it relates to Physically Handicapped candidates.

Counsel for the Petitioner: MR.M. SURENDER RAO

Counsel for the Respondent : MR. M. VIJAYA KUMAR

The Court made the following:

COMMON JUDGMENT:

(per G. Bikshapathy J)

1. The Recruitment Notification (Advertisement No.10 of 1999) issued by the Andhra Pradesh Public Service Commission to Group-II Services is yet to attain the finality, even though legal battle by the unemployed continued to be unabated for over a quinquenial period. Though the procedural deficiencies and legal tangles were cleared by this Court on the earlier occasion. Yet, spate of cases continued to flow from the 2nd round of litigation. This is an apt example as to how the recruitment to various categories of posts is being delayed for years together.

2. These batch of Writ Petitions arise out of the common Order passed by the Andhra Pradesh Administrative Tribunal (for brevity the "Tribunal") in O.A.NO. 3840 of 2004 and Batch, dated: 15.10.2004.

3. Following brief recitals are necessary to appreciate the matter in a proper perspective:

Andhra Pradesh Public Service Commission (for short "A.P.P.S.C.") issued notification on 28.12.1999 vide Advertisement No. 10 of 1999 calling for the applications for the recruitment to 27 category of posts in various departments consisting of executive and non-executive posts. Out of 27 categories, 10 fall in executive posts and 17 in non-executive posts. While written test and viva voci are the requirement for selection to the executive posts, only written test is the criteria for non-executive posts. In the notification, number of vacancies in each category were

not notified, but only in respect of three categories, the number of vacancies were notified viz. 15 posts of Asst. Municipal Commissioner, Grade-III, 8 posts of Asst. Commercial Taxes, 6 posts of Asst. Labour Officer. In respect of other executive cadre posts, the number of vacancies left blank awaiting clearance from the Government, while non-executive cadre only 111 posts were notified in the category of Asst. Section Officers. In respect of other non-executive cadre, number of vacancies were stated as awaited. Notification further stated that the vacancies which arose up to 31.8.2000 were to be filled up. However, during the course of time, the vacancies notified in respect of Asst. Section Officers were withdrawn by the Government in their letter dated: 7.8.2000 and hence the selections were only confined to three categories of executive posts. The A.P.P.S.C. held the written test and held viva voci and published the list. Accordingly appointment Orders were issued to the selected candidates in the year 2001 in respect of the three categories of executive posts referred to above. However, aggrieved by the action of the authorities in withdrawing the Asst. Section Officer posts challenge was made before the tribunal in O.A.NO. 7443 of 2004. The tribunal by an Order dated: 21.12.2002 directed the A.P.P.S.C. to make selection of the candidates to 141 Asst. Section Officers posts for consequential appointment by the Government. In pursuance of the said directions, the candidates, who were in Order of merit in the written test were selected and they were appointed in 2002. Up to this stage we describe as first round selection. However, aggrieved by the Order of the tribunal, in so far as it relates to non-filling up of posts under remaining executive category, Writ Petitions were filed in W.P.No. 2868 of 2002 and 2904 of 2002. This Court by an Order dated: 8.7.2003 disposed of the Writ Petitions with the following directions:

> **"(a) The Government shall assess the vacancy position in respect of the posts covered by Notification No.10/1999 as on 30.8.2002 and fill up the same by candidates who were selected by A.P.P.S.C. duly observing the rule of reservation.**
>
> **(b) The personnel who are to be deployed and adjusted from Surplus Man Power Cell have already been reflected in the Annexure and the total vacancy position was arrived at after giving credit to the number**

of persons deployed in the direct recruitment quota, however, if there is any surplus man power still unadjusted as on30.8.2000, the Government shall work out the same and deploy those personnel and the appointment shall be made to the remaining vacancies.

© The persons who were promoted and posted on temporary basis or ad hoc basis in the vacancies earmarked for direct recruitment shall be reverted back to their original posts.

(d) The Government shall strictly observe the rule relating to the ratio to be maintained between the direct recruits and the promotees in accordance with the quota prescribed in the relevant Service Rules and neither excess intake shall be allowed to be crept in or the deficiency is allowed to persist except in exceptional or unavoidable circumstances.

(e) The entire exercise shall be done within a period of six months from the date of receipt of a copy of this Order."

In pursuance of the directions of this Court, the authorities assed 973 vacancies in executive category and 193 vacancies in non-executive category. By this process, this became imperative for the A.P.P.S.C. to interview some more candidates in view of the additional recruitment to the posts as referred to above. However, A.P.P.S.C. entertained a doubt with regard to the preparation of the merit list as to whether one merit list has to be prepared. However, this Court while stating that no clarification was necessary, observed that only one merit list is required to be prepared in respect of the notification No.10 of 1999. Against the said clarificatory Order, the matter was again carried before the Supreme Court in S.L.P.No. 7772 of 2004 and the Supreme Court deleted the said portion.

4. A.P.P.S.C. started preparations for making selections, which we described second round selections to the posts referred to above and in that process, it revised the earlier selections so as to make the entire selections on the basis of one merit list. The said revision has the effect of distributing the position of the already appointed candidates in 2001 and 2002 in the posts of Asst. Municipal Commissioners, Asst. Commercial Tax Officers and Asst. Section Officers.

Therefore, they filed O.A.NO. 3246 of 2004 and Batch challenging the action of the A.P.P.S.C. in recruiting them to above posts dislocating selections made earlier. Some of the O.As. were also filed questioning the selections on the ground that they should not have been selected for the posts for which they have not given the options. While admitting the batch of O.As., the tribunal granted the following Order:

> "Having regard to the facts and circumstances, the respondents are directed to maintain status quo as it obtains today with respect to the applicants shall be maintained pending disposal of the O.As."

5. Another batch of O.As. came to be filed in O.A.NO. 3247 of 2004 and Batch contending that while selecting the candidates, the procedure prescribed in G.O.Ms.No. 124 GAD dated: 7.3.2003 amending G.O.Ms.No. 763 should have been followed and the same having not been followed, the selections are liable to be set aside. Yet, another set of O.As. were filed questioning the action of A.P.P.S.C. for considering their cases for the posts for which nil options/no options were given. In one of the O.A. No.3768 of 2004, challenge was made to the selections on the ground that no reservation was made for Physically Handicapped(hereinafter called "PHC"). It is in contravention of rule 22 of A.P. State and Subordinate Rules.

6. After hearing the learned counsel for the petitioners and also the counsel for A.P.P.S.C. and the learned Advocate General, the tribunal framed the following issues for consideration:

> "**(i) Whether the impugned selections made by the A.P.P.S.C. call for any interference on the ground that the selections were made by following a single-merit list resulting in upsetting the earlier selections and appointments made in 2001/2002?**
>
> **(ii) Even if the selections made based on single merit list do not call for any interference, are the applicants in (1) O.A.NO. 3426/2004, (2) O.A.NO. 3328/2004, (3) O.A.NO. 3329/2004 and (4) O.A.NO. 3351/2004 entitled to claim that their earlier selections cannot be unsettled on the ground that the A.P.P.S.C. has awarded interview marks indiscriminately in the interviews held in 2004?**

(iii) Whether the impugned selections made by the A.P.P.S.C. call for any interference as it had not followed the procedure prescribed in G.O.Ms.No. 124, GAD, dated: 7.3.2002 while making selections and also on the ground that rule of reservation in favour of local candidates and reservation as required under Rule 22 of the General Rules was not followed.

(iv) Whether the impugned selections calls for interference on the ground that rule of reservation in favour of P.H.C. persons was not followed while making selections?

(v) Whether the impugned selections made by A.P.P.S.C. call for any interference on the ground that it had selected certain candidates to posts for which they have not given their preference or indicated 'Nil' in the proforma supplied to the candidates.

(vi) Whether the applicants in O.A.NO. 3979 and O.A.NO. 3765 of 2004 are entitled for any direction to the A.P.P.S.C. to consider their cases for selection against B.C. © vacancies in Zone-VI notified in Advertisement No.10/1999?"

7. In respect of the first issue, the tribunal held that there was nothing irregular or illegal in A.P.P.S.C. making the selections based on single merit list even if results in upsetting the selections and appointments made in 2001/2002. With regard to the 2nd issue, the tribunal found that the A.P.P.S.C. had not awarded interview marks indiscriminately in the 2nd round of selections and thus answered the 2nd issue in the negative. With regard to the issue No. (iii), the tribunal followed its earlier judgment in O.A.NO. 562 of 2002 and Batch, dated: 27.7.2002 and also for the other reasons recorded in the Order held that the selections made by the A.P.P.S.C. in 2001 without following the amendments issued to G.O.Ms.No. 763, GAD, dated: 15.11.1975 in G.O.Ms.No. 124, dated: 7.3.2002 cannot be sustained and consequently directed the A.P.P.S.C. to review the selection list by following the Presidential Order keeping in view G.O.Ms.No. 124, dated: 7.3.2002. and consequently it found it is not necessary to examine the issue as to whether 70 per cent in favour of local candidates and rule of reservation has to be correctly followed or not which could be examined by the A.P.P.S.C. at the time of review of the

selection list as directed. With regard to issue No. (iv), the tribunal held that the selections without giving reservations to PHC persons cannot be said to be illegal and accordingly selections are not liable to be set aside. With regard to the issue no. (v), the tribunal held that there was no merit in the contention of the applicants and therefore, it was held against the applications. With regard to issue No. (vi), it was held against the applicants. Accordingly, the tribunal disposed of the O.As. in accordance with the findings referred to above. Aggrieved by the Orders passed by the tribunal, the present batch of Writ Petitions have been filed.

8. Principally two important issues were argued by the learned counsel for the petitioners. Firstly, it is contended that the notification was issued in 1999 and the Rules relating to the recruitment as existed at the time of relevant time have to be followed. When once the selection process had commenced, even though the procedure rules are amended during the pendency of final selection, yet, amended rule cannot be implemented as it would tend to unsettle the settled situation. It is further contended that G.O.Ms.No. 124 GAD dated: 7.3.2002 has to be given prospective effect and it cannot be applied to on going selections. It is further urged that G.O.Ms.No. 124 is contrary to the provisions contained in the Presidential Order and hence the appointments have to be only made on the basis of the rule position that existed prior to G.O.Ms.No. 124. The learned counsel have greatly relied on the judgment of the Supreme Court in N.T. DEVIN KATTI Vs. KANATAKA PUBLIC SERVICE COMMISSION. Even otherwise, it is contended that since some of the appointments were already made even prior to the issue of G.O.Ms.No. 124, such of the appointments which have made prior to issuance fo the said G.O. namely three category of posts i.e. Asst. Municipal Commissioners Grade-III(15 posts), Asst. Commercial Tax Officers (83) and Asst. Labour Officers (6) which were filled in 2001 and posts of Asst. Section Officers (141 posts) which were filled consequent on the directions of the tribunal in 2001 cannot be made applicable to them as by the date of issue of G.O.Ms.No. 124, who were selected for the posts were started functioning in the said post. Therefore, if the process is reversed, it would certainly create administrative dislocation apart from causing prejudice to the service interest of the

respective appointed candidates.

9. On the other hand, the learned Advocate General as also the learned Standing Counsel for the A.P.P.S.C. and submits that any amendment brought out is presumed to be prospective in effect unless it is specifically stipulated in the respective provisions, but, however, this rule will apply only in respect of the substantive right. In the case of amendment to the procedural law, it is always considered to be retrospective unless it is specifically stated contra. It is also submitted that the principles of interpretation of statutes will equally apply to the interpretation of the administrative Orders issued by the Government from time to time where the issue is not covered by any statutory provisions. Such executive Orders have been issued in exercise of the powers conferred under Article 165 of the Constitution of India and therefore, they yield the same force on par with the statute law. It is also submitted by virtue of the revision of the entire merit list to keep in conformity with the procedure as laid down in G.O.Ms.No. 124 the candidates who were already appointed to the posts in 2001 and 2002 in first round selection have to be rescheduled and they will be relocated in the other eligible posts and in some cases, they may not find place selected list also. Thus, the entire review of the appointments made in the first round was wholly unwarranted. At the most, review could be confined to the posts other than the posts for which the appointment was made in the first round.

10. Elaborate arguments were advanced by the learned counsel for the petitioners and also the learned counsel for the respondent with reference to the principle laid down by the Supreme Court, and the tribunal has meticulously considered these contentions.

11. The issue that calls for consideration is whether the procedural rules as issued in G.O.Ms.No. 124 are retrospective in nature. If so, effect of rules on the process of

selection undertaken by the A.P.P.S.C.?

12. We need not dilute much on this subject with regard to the retrospective operation of the procedural laws. Right from COLONIAL SUGAR REFINING COMPANY LTD. Vs. IRVING upto SHIVA SHAKTI COOPERATIVE HOUSING SOCIETY, NAGPUR Vs. SWARAJ DEVELOPERS, it is well settled that the statute relating to substantive right is presumed to be prospective, unless it is expressly or by necessary implication made to have retrospective effect. However, while statute concerning with the matters on procedure or evidence which is declaratory in nature is construed to be retrospective unless there is a clear indication that such is not the intention of the Legislature. The Supreme Court was categoric in laying down the principle that no person has a vested right in course of procedure. He has only the right of proceeding in the manner prescribed. If by a statute change, the mode of procedure is altered, the parties are to proceed according to the altered mode, without exception, unless there is a different stipulation. The Full Bench of this Court in MOTICHAND JAIN V. M. JAIKUMAR after considering the copious case law on the subject observed as follows:

> **"From the above, it is obvious that when a repeal of an enactment is followed by a fresh legislation, such legislation does not affect the substantive rights of the parties unless such legislation is retrospective. However, the position of law would be different when it relates to procedural law which is presumed to be retrospective unless it is otherwise provided for in the Act."**

13. In the instant case, the recruitment is required to be confined to the procedure as laid down in G.O.P.No. 763 GAD dated: 15.11.1975. The said G.O. was issued by the Government to meet the requirement under the A.P. Public Employment Organisation fo Local Cadre and Regulation of Direct Recruitment Order, 1975(hereinafter called the "Presidential Order") issued in G.O.Ms.No. 674 dated: 20.10.1975. The said G.O. contemplates recruitment of candidates under two type namely single unit i.e. single cadre recruitment and multi unit i.e. multi cadre recruitment. In these batch of cases, we are only concerned with the multiple cadre

recruitment. The procedure for recruitment to multiple cadre posts to be in tune with the Presidential Order. Para 4 is relevant which is extracted below:

> **"4. Multiple cadre recruitment may take different forms especially in the implementation of the proposed Presidential Order on the organisation of local cadres. It may take the form of –**
>
> a. **Recruitment to fill up the vacancies in a single category for different local cadres or different parts of the State (local areas) in one department e.g. recruitment of Clerks in the Judicial Department for Courts in the Districts undertaken by the Andhra Pradesh Public Service Commission.**
>
> b. **Recruitment to fill up the vacancies in identical or different categories in different local cadres in different departments in one part of the State (a local area) e.g. recruitment to Group-IV services undertaken by the Collectors now.**
>
> c. **Recruitment to fill up the vacancies in different categories in different local cadres in different departments for different parts of the State (local areas) e.g. recruitment to Group-II Services undertaken by the Andhra Pradesh Public Service Commission."**

14. With regard to the procedure to be followed in respect of the recruitment to the posts falling in multi cadre is set out in Annexure-III (clauses 3 to 9) to the Order, which is extracted below:

> **"3. The number of posts reserved in favour of local candidates in relation to the local area in respect of each category of posts in each of the local cadres shall be determined, this number in each case being the prescribed percentage, applicable to the relevant category of the vacant posts to be filled by direct recruitment in respect of that category any fraction of a post being counted as one; provided that there shall be at least be one post left un-reserved in each such cadre.**
>
> **4. Similarly, the number of posts reserved, if any, in favour of the members of the Scheduled Castes, Scheduled Tribes, Backward Classes, Physically Handicapped persons, etc. to be appointed in each of such local cadres shall also be separately ascertained.**
>
> **5. From amongst all eligible applicants, whether such applicants are local candidates or not, a combined list to fill up all the available vacant posts in all the local cadres put together shall be drawn up. This list**

shall be prepared on the basis of the relative merits of all eligible applicants.

6. The candidates in the combined merit list may in the order of merit be successively allotted to the cadre of their preference so long as such allotment does not violate the rule of special representation in General Rule 22 in Part II of the Andhra Pradesh State and Subordinate Service Rules providing for reservation in favour of the Scheduled Castes, Scheduled Tribes, Backward Classes and the, Andhra Pradesh Public Employment (Organisation of Local Cadres, and Regulation of Direct Recruitment) Order, 1975.

7. If such allotment violates the rule of special representation or the extent of preference to local candidates such candidate may be allotted to the cadre of his second or subsequent preference consistent with the rules of special representation and the extent of preference to local candidates in respect of each such cadre.

8. This process may be repeated until all the cadres are filled.

9. If in the process of such allotment a candidate in the combined merit list cannot be allotted to any cadre without violating the condition regarding preference to local candidates or communal reservation such candidate may be passed over."

However, as on the date of the notification and also on the date of the selection and appointment to the posts of three categories under first round selections referred to above and also Asst. Section Officer posts, it continued to be in vogue. But, however, a procedural change has been brought about initially vide G.O.Ms.No. 8, dated: 8.1.2002 covering the post under direct recruitment without reference to the procedure prescribed under Annexure-I to G.O.Ms.No. 763, dated: 15.11.1975. The said amendment reads as follows:

"3. Accordingly the following amendment is issued to the procedure prescribed in paras 3 and 4 of the Annexure I to the G.O.(P)No. 763, General Administration (SPF.A) Department, dated: 15th November, 1975.

4. In respect of the Annexures-II and III to the G.O. 3rd read above Orders will be issued separately."

15. It is further stated that in respect of Annexures II and III, the procedural changes

could be issued separately. Therefore, in pursuance of the said provision, G.O.Ms.No. 124, dated: 7.3.2002 was issued. The amended provision reads as follows:

"In the Annexure-II-

(i) for paragraphs 3 and 4, the following shall be substatited namely,

(3): xxxxx

(2) In the Annexure-III, for paragraph 3, the following shall be substituted, namely:

"3: The provisional list shall be divided into two parts. The first part shall comprise 40% of the posts consisting of combined merit lists of locals as well as non-locals and the remaining second part shall comprise the balance 60% of the posts consisting of locals only and the posts shall be filled duly following the rule of reservation."

Therefore, by virtue of the aforesaid provision, the provisional list shall be divided into two parts. The first part shall contain 40% of the posts of combined merit list, local and non-local and remaining 60% shall consist of only locals. Therefore, keeping in view the principle laid down by the Supreme Court in catena of decisions referred to above, it is beyond pale of controversy that G.O.Ms.No. 124, dated: 7.2.2003 has to be made applicable even to the ongoing process of recruitment as it is only an amendment to procedural aspect and it did not affect any substantive rights of any individual. It is sought to be contended that the amendment runs counter to the provisions of the Presidential Order in asmuch as, no provisional list is contemplated. Further, in respect of the multi cadre posts, 70% of posts shall be filled by direct recruitment comprised of only locals and 30% shall comprise of locals and non-locals and in case of specified Gazetted category 60% of posts shall be filled by direct recruitment from the locals and 40 per cent by locals and non-locals. This was given a go bye in the amendment and therefore, the amendment is illegal and hence the G.O. is unenforceable as hit by the Presidential Order. It is true that the amendment as brought in G.O.Ms.No. 124, substituting paragraph 3 in the Annexure-III of G.O.Ms.No. 763, dated: 15.11.1975 is not happily worded as rightly contended by the learned counsel for the respondents and some times lack of

drafting skill also leads to confusing and chaotic state of affairs, but that does not mean that the entire provision has to be struck down. It is well settled rule of construction that when two provisions do not go together, efforts must be made by the Courts to resort to harmonious interpretation so as to achieve the object sought to be reached by such amendment. Even if the literal interpretation is likely to lead absurdity, it is all the more essential to ensure that the intedment of clause (8) of the Presidential Order has to be given appropriate interpretative meaning and the primary of the Presidential Order has to be kept upright. The difficulty arose because of the multiple cadre recruitment. In respect of the non-gazetted categories in multi cadre, separate reservation is provided while in respect of the specified gazetted local cadre, separate reservations are provided and the reservations shall be in accordance with the clause (8) of the Presidential Order. Therefore, the procedure as contemplated under the amendment, is to first prepare the select list consisting of locals and non-locals and thereafter to prepare the 2nd list consisting of only locals. However, these lists have to be carved out from the single merit list. But, the percentage has to be in tune with the para (8) which cannot be modified under any circumstances except by the Presidential Order itself. In fact, the A.P.P.S.C. have also while not stating openly that the amendment is incapable of being implemented in the wake of clause (8) of Presidential Order have stated that the mention of 60% has to be related to the relevant cadres in whose case, the local reservation is 60% as per para 8 of the Presidential Order.

16. The Government in the counter in para 21 stated as follows:

> **"That one of the grounds raised by the petitioners is that while THE Presidential Order mandates 70% reservation for local candidates, G.O.Ms.No. 124, dated: 7.3.2002 provides for 60% reservation for locals, meaning thereby there is violation of Presidential Order. A consolidated reading of G.O.(P) No. 763, dated: 15.11.1975 shows that Annexure.III deals with multiple cadre recruitment, meaning thereby that in one recruitment there can be several cadres clubbed together for recruitment. Therefore, there can be cadres where local reservation is for 80% or 70% or even 60% as contemplated under Para 8 of the**

Presidential Order. Such mention of 60% has to be related to the relevant cadres in whose case the local reservation is 60% as per para 8 of the Presidential Order. Further, merely because there is a mention of 60% for locals, that cannot over-ride the Presidential Order and when there is conflict between the present G.O.Ms.No. 124, dated: 7.3.2002 and the Presidential Order, no doubt Presidential Order shall prevail and local candidates are entitled for such percentage as mentioned in Presidential Order and by such mention in G.O.Ms.No. 124, dated: 7.3.2002, the G.O. does not become illegal per se, as long as the Presidential Order takes care of the situation. What is important is that the Government has prescribed particular procedure and the same was only to protect the interests of local candidates, which is the object of the Presidential Order. The said procedure is splitting the merit list into two parts was held legal and valid by the Tribunal while dealing with G.O.Ms.No. 8, as affirmed by the High Court. As a matter of fact, the validity of G.O.Ms.No. 124, dated: 7.l3.2002 did not fall for consideration before the Tribunal, it is not open for the petitioners to challenge the validity of G.O.Ms.No. 124. What all that falls for consideration in the present Writ Petitions is whether G.O.Ms.No. 124 can be made applicable for the present selection process or not, that is undertaken/to be undertaken by the Public Service Commission pursuant to Notification No.10/99. Once it is held that it has to be implemented for the reasons stated above, minor lapses/aberrations if any can be taken care by following the Presidential Order"

Under those circumstances, merely because there is a reference to 60% reservation, the entire G.O. need not be struck down. But, in such circumstances, the situation has to be salvaged by giving meaningful and workable interpretation. Therefore, it has to be construed that as far as the procedural aspect is concerned, the amendment brought about a change. But, however, in respect of the reservations, it has to be read in conjunction with para 8 and the reservations as mentioned in para 8, only will govern the respective cadres. It is also to be noted in this regard that when G.O.Ms.No. 8 bringing an amendment to Annexure-I of G.O.Ms.No. 763, was brought making the reservation, 20% and 80% comprise of locals and non-locals in the former percentage and only locals in the later percentage, it came to be challenged before the tribunal on the ground that when the ongoing selection process of D.S.C. 2001 for the Secondary Grade Teachers, School Teachers,

Language Pandits, G.O.Ms.No. 8 was brought into effect and that should not be applied to the ongoing process as it has prospective effect. The tribunal in batch of O.As. O.A.NO. 562 of 2002 and Batch, dismissed the O.As. against which the batch of Writ Petitions were filed before the High Court. The Division Bench of this Court in W.P.No. 15935 of 2002 upheld the Order of the tribunal and dismissed the Writ Petitions. Against the said Order, the matter was carried before the Supreme Court and the Supreme Court also dismissed the same. G.O.Ms.No. 124 is accomplishment of balance portion in respect of Annexure-II and III. But, in the instant case, on going recruitment process related to Group-II posts, but the principle is one and the same. As regards reliance placed by the learned counsel for the petitioner on Devin Katti's case (1st cited supra), the tribunal has referred to the facts of this case and rightly held that the decision has no application to the facts of the case. The tribunal observed thus:

> **"In the above cases, except in the case of N.T. Devinkatti V. Karnataka Public Service Commission, the Hon'ble Supreme Court/A.P. High Court/Punjab and Haryana High Court/Central Administrative Tribunal have considered the aspects relating to the rule of reservation/rule relating to qualification/rule relating to direct recruitment against temporary vacancies/rule relating to change in the ratio between direct recruits and promotees/guidelines issued regarding teaching experience for recruitment to the post of Professor/prescription of minimum marks for the written test/waiving of minimum marks in the P.G. entrance which were prescribed in the prospectus/relaxation of qualifications notified in the advertisement/change in the marks allocated for preassessment and written test for admission to MCH course and held that the rules/guidelines as obtaining on the date of notification/date of occurrence of vacancies should be the criterion. In the present cases we are not concerned with the above aspects but with the aspect of the procedure to be followed for fulfilling the requirement of reservation in favour of local candidates. The facts of those cases have no application to the facts of the present case. However, in the case of Devinkatti, the Supreme Court considered the aspect relating to the change in the reservation policy and also the procedure to be followed for the purpose of implementing the rule of reservation. In that case, the Karnataka Public Service Commission notified the vacancies for recruitment to the post of Tahsildars. The Karnataka Public Service Commission issued a notification on 29.5.1975 inviting applications from in service candidates for**

recruitment to 50 posts of Tahsildars. In the notification the details relating to reservation in favour of S.Cs./S.Ts./and B.Cs. was notified. According to Rule 5 of the Rules governing the posts of Tahsildars. Rules 7 to 14 of Karnataka Recruitment of gazetted Probationers Rules, 1966 shall apply in regard to the reservations in the matter of direct recruitment. According to Rule 10 of the 1966 rules, reservation for S.Cs./S.Ts./and other B.Cs. would be as per the notification issued by the Government. Under the above Rule, the Government issued a notification on 9.6.1969 for reservation of 3% in favour of S.Cs./15% in favour of S.Ts. and 30% in favour of B.Cs. The notification also prescribed the procedure to be followed in the matter of reservation. The above notification was in force at the time of notification of vacancies. However, during the pendency of selection, the Government have issued Orders dated: 9.7.1975 revising the extent of reservation and also prescribing a different mode of selection. The Supreme Court held that as G.O. Dated 9.7.1975 has been issued in exercise of statutory power, the Order acquires the statutory force and as para 11 of the G.O. dated: 9.7.1975 saved the pending selections, where selections were already advertised and made, the selections have to be made based on the Government Orders issued on 6.9.1969 and not based on the Government Orders issued on 9.7.1975. Though, in the above case, the procedure to be followed for the purpose of making reservation fell for consideration, the Supreme Court took a view that the Orders issued by the Government on 9.7.1975 cannot be applied for that particular selection, as the G.O. issued revising the procedure to be followed clearly states that it is not applicable to cases where reservation has already been made and advertisements have been issued. In the present case, G.O.Ms.No. 124, GAD, dated: 7.3.2002 does not stipulate any condition that the above G,.O. is not applicable to cases where vacancies have already been notified or where the process of selection is not completed. Therefore, the above judgment also has no application to the facts of the present case. As already pointed out above, the law relating to the retrospective effect procedural matters is well settled and the change in procedure brought out during the pendency of selections has to be applied to the selections which have not been finalised."

17. It is also brought to our notice, that the Government issued Memo No. 42005/Ser.D/2002-1, dated: 28.8.2002 clearly spelling out the procedure to be adopted. Paras 2 and 3 of the said Memo reads thus:

"**2. Orders have been issued in G.O.Ms.No. 8, General Administration (SPF-A) Department, dated: 8.1.2002, directing while filling up of the posts which are organized as District cadre posts, 20% of the posts shall be filled up first from the combined merit list of both local and non-local candidates and thereafter remaining 80% of the posts shall be filled up by local candidates only. It has also been directed. In the G.O. that while filling-up of the posts, special representation provided in the A.P. State and Subordinate Service Rules, under Rule-22 shall be followed suitably. Where reservation in direct recruitment in favour of local candidates and open category is 70:30, the first 30% of the posts have to be filled up from the combined merit list of both local and open category (both local and non-local) candidates based on their overall merit and the communal roster. The remaining 70%of the posts have to be filled up only by local candidates based on their merit and communal roster point. The same principle has to be followed for specified gazetted category posts for which reservation in favour of local and open categories is provided in the ratio 60:40. Necessary Orders to this effect have been issued by General Administration (SPF-A) Department, in G.O. in the reference 2nd cited above.**

3. Now, there is a reservation on two counts – one, communal reservation and another, in local candidate reservation. Both have to be integrated. In order to avoid mistakes by various Recruiting Authorities in filling up the posts by providing for reservation in favour of local and O.C. category candidates and for ensuring that reservation provided in Rule 22 of A.P. State and Subordinate Services Rules, a detailed example case of filling up of (39) posts of School Assistants is enclosed, as Annexure-Y. All the recruiting authorities are directed to follow the procedure while filling up the posts for which communal reservation and to all cadre reservation apply"

18. In view of the aforesaid discussions, we are of the considered view that the Order of the tribunal cannot be found fault with.

19. However, we require to answer one more issue in this regard. As we have already noticed that the notification was issued in 1999 and initially appointments

were made only to three categories of posts as referred to above. When the posts of Asst. Section Officers in non-executive cadre were withdrawn and the Orders were challenged before the tribunal, the tribunal issued directions for filling up the above posts. Accordingly, Asst. Section Officer posts were also filled up. But, subsequently when the Orders of the tribunal were challenged, this Court in W.P.No. 2868 of 2002 disposed of the Writ Petitions with the directions (extracted supra). In the meanwhile, the G.O.Ms.No. 124 was issued bringing a change in the procedure. It is the case of the official respondents that the entire merit list has to be redrawn taking into account the performance of the candidates who were already appointed under first round selections and working in the respective posts and therefore, it became necessary to shift the candidates who were already appointed to some other posts depending on their merit ranking and performance and also the reservation rosters. The tribunal holding that G.O.Ms.No. 124 has to be implemented in toto, held that the entire list has to be redrawn and the candidates of first round selection must be reallotted and realigned. It is observed that by virtue of the re-alignment some of the persons who were already appointed to the posts of Asst. Municipal Commissioner Grade-III, Asst. Commercial Tax Officers and Asst. Labour Officers are required to be reallotted to some other posts. Even though, one merit list is contemplated and preparation of such merit list cannot be held to be contrary to the provisions of the Presidential Order, but, yet, the situation cannot be unsettle when the matter became crystallised and the candidates were appointed and working for the two or three years. It is also brought to our notice that probation of some of the candidates were also declared and some of them were in the zone of consideration for further promotion.

20. Under these circumstances, the issue that calls for consideration is whether G.O.Ms.No. 124 can also be applied to the appointments already made so as to ensure one merit list. It is also contended that some of the candidates who were appointed earlier had obtained higher merit ranking and on account of the filling up of those vacancies early, they were appointed in those vacancies, but had there been a common merit list, they would have got appointment to the posts carrying higher pay scales and brighter prospect. It is also further contended that some of the

candidates were appointed to the posts to which they were not give any preference. The candidates, who were appointed, in pursuance of the first round selections cannot be allowed to raise the contention that they should be placed in higher merit list and allotted the posts carrying higher scales of pay. Having accepted the post, it is not permissible for them to resile simply because of the changed circumstances by virtue of the Orders of this Court, they cannot be allowed to take advantage. It may be true that if the recruitment had taken place at one stretch, these difficulties would not have been arisen. But, on account of the inaction on the part of the Government, the tribunals and Courts have to pass Orders intermittently.

21. Of course, the delays dislocate and tend to defeat the avowed purposes, but the law cannot be said to be without arms to stretch its hands to set right such deviational dislocations.

22. Under those circumstances, we find that disturbing the appointments already made in 2001 and 2002 under first round selection would entirely dislocate the selection process and more over, by the date of issue of G.O.Ms.No. 124, the appointments were already made. Even though the process came to be again recommenced at the instance of the Orders of this Court. Therefore, we find that the appointments already made in the first round cannot be disturbed by redrawing the list, which were admittedly completed prior to G.O.Ms.No. 124. We also do not agree with the contention that when no preference was given to particular post, authorities ought not to have appointed to such posts. If such an appointment was made, it is open for the candidate concerned to refuse the appointment. But, it cannot be contended that they should be posted only in the post they gave preference.

23. Right to employment is not a fundamental right enshrined under Article 16 of the Constitution of India. A candidate on making an application acquires a right to be considered for appointment if he is otherwise qualified. A candidate on making an application for the post pursuant to the advertisement, does not acquire any vested

right of selection. But, if he is eligible and otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire vested right to be considered for selection in accordance with the Rules as existed on the date of the advertisement. Even if the candidate is selected, he cannot have any fundamental rights to claim the appointment and it is always open for the appointing authority to appoint or not depending on the exigencies of the requirement. Merely because, a candidate is required to give preference, it does not mean that he should be appointed in the post for which he preferred. It is the prerogative of the Government to appoint him in any of the categories advertised. The expression of preference would only enable the Government to accommodate his choice of preference as far as possible. But, he does not carry any vested right merely because he has expressed his choice. Under those circumstances, while upholding the finding of the tribunal that the preparation of one merit list is not contrary to the Presidential Order, but we do not approve the direction of the tribunal to review the entire select list including the cases of the persons, who were appointed in the first round selections. However, if any fresh intake is made in the aforesaid three categories or the other cadre of Asst. Section Officers, it is open for the Government to fix inter se seniority among the first round appointees and 2nd round appointees keeping in view the merit ranking obtained in merit list.

24. It is also contended that the persons who were appointed in the first round selections would become seniors to the appointees under 2nd round of selections, even though appointees under 2nd round are more meritorious. This Court is not inclined to adjudicate this matter. It is for the Government to take appropriate steps in this regard.

25. Another important contention sought to be raised by the learned counsel for the petitioner is that the physically handicapped persons are entitled for reservation as provided under rule 22 of A.P. State and Subordinate Service Rules. It is contended that in the Special Rules in respect of the certain category of posts, the rules did not

provide reservation for PH persons. But, however, in 1996 amended A.P. State and Subordinate Service Rules came into force and therefore, the later rules will prevail over the special rules as the State and Subordinate Service Rules are later in point of time. The tribunal had considered this aspect and observed that the said Special Rules having noticed the provision contained in rule 1(d) of General Rules, wherein it has provided that if any provision of the rules are repugnant to the special rules applicable to any particular service in regard to any specific matter, the latter in respect of such service on such a specific rule prevail over the provisions of the General Rules. The tribunal observed as follows:

> **"In the present case, General Rule 22(2) does not contain any words to show that this provision would apply to the provisions contained in special rules or it applies irrespective of what is provided in the special rules. There is also no material placed before us to show that the intention of the rule making authority is that reservation in favour of PHC candidates should be followed irrespective of the provision contained in special rules. Thus, the judgment of the Apex Court in the case of S. PRAKASH AND ANOTHER Vs. K.M. KUREAN AND OTHERS reported in 1999(2) SLR 595 is not applicable to the facts of the present case. Apart from this it is also to be noted that the A.P.P.S.C. while issuing advertisement had notified that the rule of reservation in favour of PHC persons is subject to the provisions in the respective special rules. If the applicant is aggrieved by the notification, which stipulates that reservation in favour of physically handicapped candidates is subject to the provision of special rules and not according to Rule 22 of General Rules, he should have questioned the notification itself at the appropriate time. On the other hand, the applicant had subjected himself to process of selection and on the results being announced in which he did not come out successfully the applicant is questioning the selections made by the A.P.P.S.C. the applicant having appeared for the examination without protest, it is not open to the applicant to challenge the process of selection at this stage as held by the Apex Court in the case of OM PRAKASH SHUKLA Vs. AKHILESH KUMAR SHUKLA, reported in AIR 1986 S.C. 1043 and also as held by the Apex Court in the case of MADANLAL AND OTHERS Vs. STATE OF JAMMU & KASHMIR, reported in AIR 1995 S.C. 1088. Therefore, the contention on behalf of the applicant in O.A.NO. 3768 of 2004,that the impugned selections are liable to be set aside as the A.P.P.S.C. has not followed the rule of reservation in favour of PHC persons cannot be upheld. Issue No.(iv) is answered accordingly."**

In asmuch as, the special rule does not provide any reservation, the same cannot be

claimed as of right. We do not see any ground to hold that the finding of the tribunal is erroneous or contrary to law.

26. In view of our foregoing discussions, we record the following conclusions:

a. The finding of the tribunal that the selection process has to be in accordance with the G.O.Ms.No. 124, dated: 8.8.2002 cannot be said to be erroneous or contrary to law.

b. But, however, the direction that the entire select list has to be reviewed clubbing the appointments under 1st round selection is not sustainable and accordingly the procedure as contemplated under G.O.Ms.No. 124 has to be followed only in respect of the candidates excluding the appointments already made in 2001 and 2002 namely Asst. Municipal Commissioners Grade-III, Asst. Commercial Tax Officers, Asst. Labour Officers and Asst. Section Officers in non-executive cadre in view of the peculiar facts and circumstances of this case.

c. The inter se seniority between the 1stround appointees and later inducted persons under second round selection in the same cadre if any shall be decided by the appropriate authority in accordance with rules, depending on the merit ranking obtained by them.

d. The Reservation to PHC category wherever it is not provided under the Special Rules cannot be claimed and hence the findings of the tribunal do not call for any interference.

27. We do hope that the process of selection would be completed expeditiously without further hurdles. Subject to the above conclusions, the Writ Petitions stand dismissed.

28. There shall be no Order as to costs.

G.BIKSHAPATHY, J

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P.S. NARAYANA, J

27-12-2004

CHV

L.R. COPY TO BE MARKED: Yes

ASST. REGISTRAR

//**TRUE COPY**//

SECTION OFFICER

THE HON'BLE MR. JUSTICE G. BIKSHAPATHY

(FOR HIS LORDSHIP'S KIND PERUSAL)

To

1. The Andhra Pradesh Public Service Commission, rep. by its Secretary, Gruhakalpa complex, Nampally, Hyderabad.

2. The Government of A.P. rep. by its Secretary, GAD Services. A.P. Secretariat, Hyderabad.

3. (2) CCs

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11. One C.C. to Mr. Anand Kumar Kapoor, Advocate.

12. One C.C. to Mr. D.V.N. Acharya, Advocate.

13. One C.C. to Mr. M. Surender Rao, Advocate.